

AMENDMENT UNDER 37 C.F.R. § 1.111  
Application NO.: 09/485,820  
Atty Docket No.: Q57694

**REMARKS**

The Office Action of October 29, 2004 have been received, and it's contents carefully considered.

Claims 1, 3 to 5, 7, 8, 11, 12 and 17 are all the claims pending in the application.

Claims 7 and 8 have been rejected under the second paragraph of 35 U.S.C. § 112 as indefinite.

The Examiner states that it is unclear if the weight of the water soluble hydroxy compound is based on the weight of the solid formulation, or on the weight of each granule, or on the weight of the envelope and solid together. The Examiner states that the basis for the weight as described in the specification should be added to the claims.

In response, applicants point out that the basis of the weight of the water soluble hydroxy compound is the weight of the solid pesticidal formulation, as stated at page 3, lines 4-6.

Accordingly, applicants have amended claims 7 and 8 to state that the content of the water soluble hydroxy compound is based on the weight of the solid formulation.

In view of the above, applicants submit that the claims comply with the requirements of the second paragraph of 35 U.S.C. § 112 and, accordingly, request withdrawal of this rejection.

Claims 1, 7, 8, 11, 12 and 17 have been rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent 5,698,210 to Levy.

In essence, the Examiner has maintained the previous rejection of these claims based on Levy.

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The Examiner states, in response to the arguments that applicants submitted, that nowhere in the claims is there a requirement for complete encapsulation of a pesticide.

In addition, the Examiner states that there is no requirement in the claims for an intimate contact of the solid by an enveloping alcoholic compound constituting part of the granule or powder.

The Examiner refers to Figure 1 of Levy, as well as to column 5 of Levy which describes Figure 1 as a perspective view of a degradable container, such as a water soluble polyvinyl alcohol pouch, containing the composition of the Levy invention. In addition, the Examiner states that Levy discloses a PVA pouch.

These arguments essentially are the same as the Examiner set forth in the previous Office Action. Applicants responded to each of these arguments in the Response Under 37 C.F.R. § 1.111 filed on July 19, 2004. The Examiner has not responded to any of the points applicants presented in the Response of July 19, 2004, and has merely repeated his previous rejection.

Accordingly, applicants continue to argue as in the Response of July 19, 2004, and point out that the Examiner has not addressed the arguments that applicants have submitted.

At page 3 of the Office Action, the Examiner does set forth a number of additional comments, but the Examiner's additional comments do not address the specific arguments that applicants submitted.

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In particular, with respect to Levy, the Examiner merely states that it contains the recitations of the present claims, but he does not set forth any analysis how Levy satisfies the recitations of the present claims.

In view of the above, applicants submit that Levy does not disclose or render obvious the subject matter of the present claims and, accordingly, requests withdrawal of this rejection.

Claims 1, 3-5, 7, 8, 12 and 17 have been rejected over the newly cited EP 0 579 951 document to Homma et al.

The Examiner states that EP '951 discloses, at page 3, lines 1-5 and 25-27, the OH compounds of the present claims in an amount of .1 to 10% of solids, as disclosed at page 3, lines 8-10, which are coated with PVA, as disclosed at page 4, line 19.

EP '951 discloses a pesticidal composition that comprises a coated pesticide comprised of an active pesticidal ingredient that is coated with one or more ingredients selected from the group consisting of aliphatic acid esters of aliphatic polyols, phospholipids, or a mixture thereof. In addition, the pesticidal composition can contain a sizing agent, which is added in addition to the coated pesticide. This sizing agent can be a further coating on the coated pesticide, or can be a powder sizing agent that is mixed with a powder coated pesticide.

Although the Examiner states that EP '951 discloses the presently claimed OH compounds, applicants submit that EP '951 does not disclose such compounds.

In particular, the portion of EP '951 to which the Examiner has referred, namely, page 3, lines 25-26, discloses aliphatic polyols which constitute the aliphatic polyol moiety of aliphatic

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acid esters of aliphatic polyols that are contained in the coated pesticides. EP '951 states that these aliphatic polyols can be saturated or unsaturated aliphatic polyols, and gives, as examples, glycerin, propylene glycol and sorbitol.

While glycerin and polypropylene glycol are water soluble hydroxy compounds, these compounds are not present in the pesticidal composition of EP '951, but rather are a reactant which is used to form the aliphatic acid ester of the aliphatic polyol, which is the compound that actually is present in the coated pesticide of EP '951. Accordingly, although EP '951 refers to glycerin and propylene glycol, these components are not actually present in the coated pesticide.

Thus, EP '951 does not disclose the water soluble hydroxyl compound of the present invention as a component of a solid pesticidal formulation as recited in claim 1. The description of "glycerin" at page 3, line 27 of EP '951 is not for an additive of a solid pesticidal formulation, but is used for a preparation of an ester that is a coating material.

Further, the coated pesticide disclosed in EP '951 constitutes a formulation wherein each of the powders is coated with an ester membrane on the surface. On the other hand, the present invention provides an enveloped formulation wherein powders or granules are enveloped in a water soluble substance. At that point, there is a large difference between these techniques.

In view of the above, applicants submit that EP '951 does not disclose or render obvious the subject matter of the present claims and, accordingly, request withdrawal of this rejection.

Claims 1, 3, 5, 7, 8, 11, 12 and 17 have been rejected under 35 U.S.C. § 103(a) as obvious over Huang et al in view of Surgent.

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In this rejection, the Examiner maintains the previous rejection of the claims over these references.

The Examiner states, at the top of page 3 of the Office Action, that these references disclose an aerial application over a rice paddy, and that this constitutes a throwing of the composition. The Examiner states that Surgant permits this type of application also.

The Examiner further states that Huang et al have the formulation recited in claims 1-13, and that Surgant discloses placing agricultural formulations in PVA bags. The Examiner points out that the present claims can employ PVA bags. The Examiner states that Surgant discloses the use of these bags to resist atmospheric conditions, low temperature, exposure to applicator, and can envelope any age (sic) formulation. The Examiner refers to the Summary of Surgant.

The Examiner states that the PVA bags in Surgant, therefore, can be used to envelope any of the pesticidal compositions disclosed in Homma (EP '951), Huang et al or Ogawa (supplied by applicants).

Applicants have presented detailed comments concerning the combination of Huang et al and Surgant in the Response filed on July 19, 2004. The Examiner has not responded to those comments, except to state that it would have been obvious to employ the Surgant bags with the compositions of EP '951 and Huang et al.

Accordingly, applicants maintain their previous arguments.

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Applicants have argued that the present invention solves the stability problem by the addition of specific hydroxy compounds to solid formulations and not by improving the film envelope itself.

Applicants point out that a number of the Invention Examples and Reference (Comparison) Examples provide evidence of the improved result. Applicants submit that the specification shows that an improved and unexpected result is obtained.

Thus, applicants submit that the effects of the present invention are not expected and are unobvious. Namely, the solubility tests at pp. 16-23 show good solubility of the present invention, and this is not disclosed or suggested in the references. In these tests, a water soluble polyvinyl alcohol film was used as an envelope. In the Invention Examples according to the present invention, the solid pesticidal formulation contained a selected water soluble hydroxy compound, whereas the Reference (Comparison) Examples did not. As can be seen the results set forth in the Tables, the film that enveloped the formulations containing the selected water soluble hydroxy compounds was unchanged in appearance after one week whereas the film that enveloped the Reference Examples hardened, and the formulations containing the selected water soluble hydroxy compounds dissolved more quickly than the formulations in the Reference Examples.

In view of the above, applicants submit that Huang et al and Surgant do not disclose or render obvious the presently claimed invention and, accordingly, request withdrawal of this rejection.

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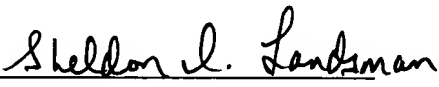
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In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

  
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CUSTOMER NUMBER

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